



Department of Environmental Protection

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Enforcement Discretion Directives Related to Implementation of the Massachusetts Asbestos Regulation

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Introduction

The Massachusetts Department of Environmental Protection (MassDEP) has identified some specific situations in which certain aspects of 310 CMR 7.15 as amended in June 2014 need to be revised so that the regulation can be feasibly implemented. Until an amended regulation is promulgated, MassDEP has issued the following enforcement discretion directives that apply to the specific situations or materials identified.

Nothing in these Enforcement Discretion Directives shall be construed in any way to affect MassDEP's legal rights pursuant to M.G.L. c. 111, § 142A, et. seq. and 310 CMR 7.15. These Directives do not constitute "final agency action," and are not "regulation" as that term is used in M.G.L. c.30A. These Directives may not be relied upon to create rights, duties, obligations or defenses, implied or otherwise, enforceable by any party in any administrative proceeding with the Commonwealth. In addition, these Enforcement Discretion Directives do not exempt any person from complying with the other requirements in 310 CMR 7.15 or any other applicable local, state or federal law, including but not limited to the Massachusetts Department of Labor Standard (DLS)'s asbestos regulations at 453 CMR 6.00.

If you have any questions about the scope of any of these Enforcement Discretion Directives, please contact Jenny Outman in MassDEP's Office of General Counsel (email: jenny.outman@state.ma.us, telephone: 617/654-6586) or Michael Elliott in MassDEP's Bureau of Air and Waste (email: michael.elliott@state.ma.us, telephone: 617/292-5575).

1. Conditional Asbestos Enforcement Discretion Directive for Work Involving Asbestos-Cement Pipe (May 22, 2015)

Asbestos cement pipes often are found in underground utility conduits and municipal water, sewer and drainage systems. Asbestos cement pipes buried below ground are considered non-friable if they are in good condition. It should be noted that active asbestos cement pipe that is exposed and is not intended

to be replaced or removed and is not disturbed by repair or replacement activities may remain in place and be backfilled. MassDEP published guidance in June 2011 that prescribed work practices for projects involving repair or replacement of underground asbestos-cement pipe. This guidance was updated in May 2015 to reflect regulation amendments that were promulgated in June 2014.

This Enforcement Discretion Directive supports section III of the updated Guidance. The updated Guidance provides a form that should be used for documenting this survey. This Enforcement Discretion allows the “pre-abatement” survey required by 310 CMR 7.15(4) to be performed by a worker who has completed a DLS-approved training course designed specifically for work on asbestos-cement pipe. Directive also allows the “post-abatement” visual inspection required by 310 CMR 7.15(8) to be performed by a worker who has completed the same training course. This Enforcement Discretion Directive also states that the establishment of full containment and implementation of work area ventilation systems are not required for the repair or replacement of underground asbestos-cement pipe. The updated Guidance provides forms for documenting the survey and the visual inspection and identifies work practices that are specific for work in pipe trenches (including the use of polyethylene tarps in trench bottoms), and does not require either full containment of the work area or work area ventilation, which would be impractical in the trenches in which asbestos-cement pipes are usually repaired or replaced.

A person who conducts the removal and associated abatement of asbestos cement pipe in accordance with the provisions of “Asbestos Cement Pipe Guidance Document and Conditional Enforcement Discretion”¹ would not be subject to enforcement by MassDEP for violation of the following requirements of 310 CMR 7.15:

- The use of a DLS-certified asbestos inspector to prepare a written survey report that documents the types, amounts, condition and location of all ACM present in a utility conduit that will be subject to demolition or removal of cement pipe as required by 310 CMR 7.15(4);
- Establishment of full containment in accordance with “Work Area Preparation Requirements” 310 CMR 7.15 (7)(c);
- Implementation of air cleaning in accordance with “Work Area Ventilation System” requirements 310 CMR 7.15 (7)(e); and
- The use of a DLS-certified asbestos project monitor to perform a post-abatement visual inspection in accordance with 310 CMR 7.15(8).

2. Asbestos Enforcement Discretion Directive for the Use of Non-Licensed Asbestos Contractors as Allowed by the MA Department of Labor Standards (December 21, 2015)

MassDEP is exercising enforcement discretion to allow the use of non-licensed asbestos contractors in asbestos abatement activities as allowed by the Department of Labor Services (DLS) at 453 CMR 6.13(1)(a), 6.13(2)(a)1., 3. and 5. and 6.14(1)(a).

M.G.L. c. 149, §6B gives the Commissioner of DLS the authority to license persons, firms, corporations and entities that engage in work with asbestos. Specific requirements for licensure and training are set

¹ This Guidance document is published at: <http://www.mass.gov/eea/docs/dep/air/laws/acpguid.pdf>

forth in DLS's regulations at 453 CMR 6.00. DLS's regulation provides exemptions from using a licensed contractor on certain work involving friable and non-friable asbestos.

MassDEP's asbestos regulations at 310 CMR 7.15(7)(b) require the use of DLS licensed contractors for asbestos abatement activities, except "as allowed by 453 CMR 6.14(1)(a)". This paragraph of DLS's regulation covers "[p]ersons, firms, corporations or other entities" using their "own regular employees or Responsible Persons" for work on friable material greater than 3 square or 3 linear feet". Although DLS allows the use of non-licensed contractors for other asbestos work, this is the only DLS exemption that MassDEP cites in its regulations. Since DLS is the agency that licenses asbestos contractors, MassDEP will defer to DLS to determine what asbestos abatement activities require work by a DLS licensed contractor.

In the next few months, MassDEP intends to propose changes to its asbestos regulations at 310 CMR 7.15 that will include all the exemptions from the use of licensed contractors that are allowed by DLS in 453 CMR 6.13(1)(a), 6.13(2)(a) 1., 3. and 5. and 6.14(1)(a). In anticipation of proposing that regulatory change, MassDEP is exercising its enforcement discretion to allow the use of non-licensed contractors pursuant to 453 CMR 6.13(1)(a), 6.13(2)(a) 1., 3. and 5. and 6.14(1)(a), provided that the person conducting the asbestos abatement activity has the requisite certification and training required by 453 CMR 6.00 and complies with all the applicable requirements of 310 CMR 7.15 and 453 CMR 6.00.